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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM16-5-000; RM16-5-001;  
RM16-23-000; AD16-20-000]

**Non-Discriminatory Open Access Transmission Tariff; Corrections**

AGENCY: Federal Energy Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: This document corrects one section of the regulations of the Federal Energy Regulatory Commission, as published in the *Federal Register* on March 6, 2018. This correction restores regulatory text that was inadvertently replaced with other regulatory text adopted in another, later final rule.

DATES: Effective **[Insert Date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

Anne Marie Hirschberger  
Office of the General Counsel  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-8387  
[annemarie.hirschberger@ferc.gov](mailto:annemarie.hirschberger@ferc.gov)

SUPPLEMENTARY INFORMATION:

## **I. Background**

1. On November 17, 2016, the Federal Energy Regulatory Commission (Commission) issued Order No. 831 concerning offer caps in Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets,<sup>1</sup> which was published in the *Federal Register* on December 5, 2016. Order No. 831 amended 18 CFR 35.28 by adding new paragraph (g)(9).
2. On November 9, 2017, the Commission issued Order No. 831-A,<sup>2</sup> which was published in the *Federal Register* on November 16, 2017. Order No. 831-A further revised 18 CFR 35.28(g)(9) regarding offer caps.
3. On February 15, 2018, the Commission issued Order No. 841 concerning electric storage participation in RTO/ISO markets,<sup>3</sup> which was published in the *Federal Register* on March 6, 2018. Order No. 841 amended 18 CFR 35.28(g) by adding a further new paragraph, which was also numbered (g)(9).<sup>4</sup> As a result, the regulatory text adopted in

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<sup>1</sup> *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, FERC Stats. & Regs. ¶ 31,387 (2016) (cross-referenced at 157 FERC ¶ 61,115), *order on reh'g and clarification*, Order No. 831-A, 82 FR 53403 (Nov. 16, 2017), FERC Stats. & Regs. ¶ 31,394 (2017).

<sup>2</sup> Order No. 831-A, FERC Stats. & Regs. ¶ 31,394.

<sup>3</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 83 FR 9580 (Mar. 6, 2018), FERC Stats. & Regs. ¶ 31,398 (2018) (cross-referenced at 162 FERC ¶ 61,127).

<sup>4</sup> On February 28, 2018, the Commission issued an Errata Notice for Order No. 841. *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Errata Notice, Docket Nos. RM16-23-000, AD16-20-000 (Feb. 28, 2018). Among other things, the Errata Notice revised 18 (continued ...)

Order No. 841 incorrectly replaced – rather than added to – the regulatory text adopted in Order Nos. 831 and 831-A.

4. In this Correcting Amendment, 18 CFR 35.28(g) is corrected by restoring the regulatory text from Order Nos. 831 and 831-A as new paragraph 18 CFR 35.28(g)(11). Nothing in this Correcting Amendment is intended to alter any previous compliance requirements or effective dates established under Order Nos. 831, 831-A, or 841, nor does this Correcting Amendment affect any tariff changes previously accepted by the Commission in compliance with these orders.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Non-discriminatory open access transmission tariffs.

By the Commission. Commissioner McIntyre is not voting on this order.

Issued: November 16, 2018

Kimberly D. Bose,  
Secretary.

In consideration of the foregoing, 18 CFR part 35 is corrected by making the following correcting amendments:

**PART 35 – FILING OF RATE SCHEDULES AND TARIFFS**

1. The authority citation for part 35 continues to read as follows:

*Authority:* 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Amend § 35.28 by adding a new paragraph (g)(11) to read as follows:

**§ 35.28 Non-discriminatory open access transmission tariff.**

\* \* \* \* \*

(g) \* \* \*

(11) A resource's incremental energy offer must be capped at the higher of \$1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at \$2,000/MWh. The actual or expected costs underlying a resource's cost-based incremental energy offer above \$1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above \$1,000/MWh and the actual or expected costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's actual costs are

verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds \$2,000/MWh. All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of \$1,000/MWh.

[FR Doc. 2018-25584 Filed: 11/23/2018 8:45 am; Publication Date: 11/26/2018]